

Title	<b>Form Requirement for Habeas Corpus Petitions Filed by Attorneys in the Reviewing Courts</b> (amend Cal. Rules of Court, rule 56.5)
Summary	Existing rule 56.5 governs the filing of habeas corpus petitions in reviewing courts and currently requires these petitions to be filed on a form approved by the Judicial Council. Subdivision (b) of rule 56.5 authorizes the court to permit the filing of nonconforming petitions for good cause. Consistent with recent amendments to the rules governing habeas corpus proceedings in the trial courts, the proposed amendment to rule 56.5 would provide that a petition filed by an attorney need not be on the Judicial Council form.
Source	Appellate Advisory Committee Justice Joyce L. Kennard, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p>Existing rule 56.5 provides that a petition for writ of habeas corpus must be filed on a Judicial Council form. Recently revised rule 4.551 specifies that a habeas corpus petition filed in the superior court must be on Judicial Council form MC-275, <i>Petition for Writ of Habeas Corpus</i>. Both rules provide a general good cause exception to the form requirement. However, rule 4.551(a)(2) entirely exempts petitions filed by attorneys from the form requirement. Attorneys who file habeas corpus petitions in death penalty cases are also exempt from the form requirement. (See rule 56.5(c)(1).)</p> <p>The proposed amendment to rule 56.5(c) would provide the same exemption for habeas corpus petitions filed by attorneys in the Courts of Appeal and in the Supreme Court in noncapital cases, thus bringing rule 56.5 into conformity with the rules governing habeas corpus proceedings in the superior courts and in capital cases. The committee is informed and believes the proposed amendment reflects widespread practice in that attorneys often file habeas corpus petitions in the reviewing court on forms and in formats they have developed for their own practice or simply attach their customized petitions to the Judicial Council form for filing.</p> <p>The proposed amendments to rule 56.5 also reflect the recently adopted policy of the Judicial Council to use plain English, including the use of “must” instead of “shall.” Cross-references to revised rules 1–18, which took effect on January 1, 2002, have also been updated.</p>
	Attachments

Effective January 1, 2003, rule 56.5 of the California Rules of Court would be amended to read:

**Rule 56.5. Original proceedings seeking release or modification of custody**

(a) A petition to a reviewing court for a writ of habeas corpus, or for any other writ within its original jurisdiction, seeking the release from or modification of the conditions of custody of one who is confined under the process of any court of this State in a State or local penal institution, hospital, narcotics treatment facility, or other institution ~~shall~~must be on a form ~~approved~~adopted by the Judicial Council. Any such petition ~~shall be~~is exempt from the provisions of rule 56 relating to form and content of a petition and requiring a petition to be accompanied by points and authorities.

(b) \* \* \*

(c) ~~[Petitions filed by attorneys in death penalty cases]~~ If the petition is filed by an attorney, ~~and challenges a judgment of death or the validity of the conviction of a person sentenced to death, or seeks a stay of execution of a judgment of death:~~

- (1) The petition need not be on the form specified in rule 56.5(a), but ~~shall~~must contain the pertinent information specified in that form, and ~~shall~~must comply with the requirements of rule ~~44(a)~~14(b);
- (2) The petition ~~shall~~must comply with the requirements of rule ~~15~~14(a);
- (3) If the petition is accompanied by a memorandum of points and authorities, the memorandum ~~shall~~must comply with the requirements of rule ~~15~~14(a); and
- (4) The petition ~~shall~~must be accompanied by a lodged copy of any related petition (excluding exhibits) previously filed in any lower state court, or in any federal court, pertaining to the same judgment and petitioner. If such documents have previously been lodged with the Supreme Court, the petition need only so state.

(c) [Nonconforming petitions] A petition, whether or not in technical compliance with (c) ~~this subdivision~~, but otherwise in compliance with applicable court rules, ~~shall~~must be accepted and filed. It may be stricken, however, if the noncompliance is not cured promptly on request of the clerk.